IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05-01-2007

CORAM

THE HONOURABLE MR. JUSTICE P.K. MISRA
AND
THE HONOURABLE MR. JUSTICE S. RAJESWARAN

WRIT APPEAL Nos.2658 to 2664 OF 2002

P. Velraj,
S/o. Pandiyan Nadar ..Appellant in WA.2658/02

M. Rajee,
S/o. Manipillai ..Appellant in WA.2659/02

S. Ravi
S/o.R. Subbian ..Appellant in WA.2660/02

K. Mohan
S/o. Kistappa Naidu ..Appellant in WA.2661/02
Rep by power Agent L.S.Thilagavathi

R. Prabu
S/o. Raja Pandi Nadar ..Appellant in WA.2662/02
Rep by Powr Agent S. Selvaraj

* P. Gnana Pragasam ..Appellant in WA.2663/02
P.V. Ekambaram ..Appellant in WA.2664/02

Vs.

1. The State of Tamil Nadu,
   Rep. by its Secretary to
   Government, Housing and
   Urban Development Department,
   Fort St. George, Chennai 9.

2. The Managing Director,
   Tamil Nadu Housing Board,
   Nandanam, Chennai 600 035.

3. The Special Deputy Collector
   (Land Acquisition),
   Tamil Nadu Housing Board Scheme,
   Chengalpattu District,
   Ashok Nagar, Shopping Complex,
   Chennai 600 083.

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4. The Executive Engineer,
   Special Division,
   Tamil Nadu Housing Board,
   Anna Nagar West, Chennai 600 002.

5. P. Asirvatham,
   S/o. Ponusamy

6. A. Devaneethi
   S/o.P. Asirvatham

   Respondents 5 & 6 impleaded
   as Respondents vide order of
   Court dated 5.11.2004 in
   WAMP.Nos.7127 to 7133 of 2004 .. Respondents in all Was

Writ Appeals filed under Clause 15 of the Letters Patent against the common order dated 15.10.2001 passed by the learned single Judge in W.P.Nos.19030, 19033, 19036, 19035, 19034, 19032 and 19031 of 1999 respectively.

Petitions presented under Article 226 of the Constitution of India to issue writs of Declaration, declaring that the Respondents are not entitled to treat the lands of the petitioner in
1.Plot Nos.11 and 12 to an extent of 4365.Sq. ft (in W.P.No.19030/99)
2.Plot Nos.1,2and 3 to an extent of 7919. Sq. ft (in W.P.No.19033/99)
3.Plot Nos.4 and 5 to an extent of 6280 Sq. ft (in W.P.No.19036/99)
4.Plot No.10 to an extent of 3998. Sq. ft (in W.P.No.19035/99)
5.Plot Nos.13 and 14 to an extent of 4502.Sq. ft (in W.P.No.19034/99)
6.Plot Nos.6 and 7 to an extent of 5030. Sq. ft (in W.P.No.19032/99)
7.Plot Nos.8 and 9 to an extent of 5155. Sq. ft (in W.P.No.19031/99)
respectively comprised in Survey Nos.483, 485 and 486 Mogappair Village, Anna Nagar, Saidapet Taluk as covered under the notification issued under Section 4(1) of the Land Acquisition Act made in G.O.No.261, Housing and Urban Development Department dated 23.10.1975 and the consequent declaration under Section 6 of the Land Acquisition Act dated 9.11.1978 which has been quashed by the Supreme Court in their order dated 21.8.1990.

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For Appellants : Mr.M. Venkaktachalapathy
Senior Counsel for
Mr.M. Sriram

For Respondent-1 : Mr.A. Arumugam, AGP

Respondents 2to4: Mr.K. Chelladurai

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Respondents 5&6 : Mr.K.V. Subramaniam SC for
Mr.S. Punniyakotti

COMMON JUDGMENT

P.K. MISRA, J

All these writ appeals are directed against the common order passed by the learned single Judge in W.P.No.19030 to 19036 of 1999 dated 15.10.2001. Since the questions raised in these writ appeals are same, all the appeals were heard together and shall be governed by the present common judgment.

2. The appellants in all these appeals claim that on 22.7.1997 they purchased lands on the basis of the registered sale deed executed by the power of attorney holder of the original owner of the lands, namely, P. Asirvatham, relating to Survey Nos.483, 485 and 486 at Mogappair Village. The lands purchased by the appellants as well as several other lands belonging to different persons were covered under Notification issued under Section 4(1) of the Land Acquisition Act, hereinafter referred to as "the Act", in G.O.Rt.No.261 Housing and Urban Development Department dated 23.10.1975. Declaration under Section 6 of the Act was made on 9.11.1978. The present dispute is confined to Survey Nos.483 and 485. Some of the land owners had challenged the land acquisition proceedings. A Division Bench of this Court had set aside the declaration made under Section 6 of the Act by order dated 8.1.1988, but notification under Section 4(1) of the Act had been kept intact. However, the land owners had taken the matter to the Supreme Court contending that notification under Section 4(1) of the Act should have been quashed. By order dated 21.8.1990, while allowing such appeals of the land owners, the Supreme Court observed as follows :-

> "The State has not challenged the order of the High Court and the land owners are the petitioners before this Court. The short question raised is that the Tamil Nadu Amendment to the Land Acquisition Act which came into force in 1967 required the declaration to be made within three years from the date of the preliminary notification. On the date the declaration was made there were hardly two days left for completion of three years and after the High Court's order on 8.1.1988, the period has already lapsed but no declaration has been published and the same can no longer be made on the basis of preliminary notification at present. In the absence of challenge by the State, the order of the High Court against it has become final.
>
> We are of the view that in these circumstances it would no more be available to the State to make the

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requisite declaration under section 6 of the Act. The acquisition itself is quashed but we make it clear that it is open to the State Government in case it is satisfied that acquisition is necessary in public interest, it is free to exercise its power of eminent domain and make a fresh preliminary notification. The Special Leave Petitions are disposed of accordingly."

3. Certain other land owners, including the original owner of the land now in dispute, had filed several writ petitions. The original land owner of the present disputed land had filed W.P.No.2879 of 1983. In all those writ petitions the prayer was to the following effect :-

"... To issue a writ of declaration or such other appropriate writ or order declaring that the words "at the date of the publication of the notification under Section 4 Sub-section 1" of Section 23(1) firstly of the Land Acquisition Act, 1894 as unconstitutional as being contrary to Second Proviso of Article 31(A) of the Constitution and direct the 2nd respondent to calculate and pay compensation for the petitioner's agricultural lands in Chengalpattu District, Saidapet Taluk, Mogappair village, which are agricultural lands under the petitioner's cultivation on the basis of the market value prevailing on the date of payment of compensation."

4. Subsequently, by way of amendment, in alternative, the petitioners claimed compensation not less than the market value as on the date of the award. Such batch of writ petitions, including W.P.No.2879 of 1983 were dismissed by the common judgment dated 22.7.1994. In the present batch of writ petitions, which have been filed by the alleged subsequent purchasers, the main contention was to the effect that since notification under Section 4(1) of the Act had been quashed by the Supreme Court in its judgment dated 21.8.1990 and since no fresh notification under Section 4(1) had been issued, it must be taken that the land continued to remain with the original owner P. Asirvatham and, therefore, the petitioners sought for declaration that the land purchased by the petitioners should not be treated as part of the land acquired.

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5. The learned single Judge repelled the contention of the petitioner by relying upon a Division Bench decision of this Court in W.A.Nos.1144 and 1145 of 1996 dated 17.1.1997 and by observing that the decision of the Supreme Court in SLP.Nos.11353 to 11355 of 1988, whereunder the notification under Section 4(1) was quashed, related to the property of the land owners who had filed appeal before the Supreme Court. As a matter of fact, the following observation of the Division Bench was extracted by the learned single Judge :-

"It may be pointed out here that the subject matter of

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the writ petition No.743/1991 and connected writ petitions (T.A. Samuel and another V. State of Tamil Nadu and others) was not the entire acquisition proceedings, it was only in respect of certain lands belonging to the petitioners therein. It was that matter which was carried to the Supreme Court in SLP Nos.11353 to 11355/1988 (A.S. Naidu and others etc. v. State of Tamilnadu and others etc.) which was disposed of on the aforesaid terms on the ground that there weas no scope for complying with the requirement that the declaration under S.6 of the Act should be made within three years from the date of publication of the preliminary notification under S.4(1) of the Act as contemplated by the Tamilnadu Amendment to the Land Acquisition Act, which came into force in 1967. Therefore, the whole acquisition proceedings was quashed. Thus, the acquisition pertaining the remaining lands was not at all in question and the notifications issued under Sec.4(1) of the Act, the declaration made under S.6 of the Act and the awards pertaining to other lands remained in tact."

6. Learned single Judge also observed that in the cases filed, the awards had been in the year 1988 itself and therefore there was no question of quashing the notification under Section 4(1) or the declaration under Section 6 of the Act. Therefore, all the writ petitions were dismissed. Learned single Judge further observed :-

"12. However, this order will not stand in the way of the petitioner approaching the Government under Section 48-B of the Land Acquisition Act."

7. Learned Senior Counsel appearing for the appellants has contended that once notification under Section 4(1) of the Act is quashed by the Supreme Court, it is obvious that the entire notification is quashed and it cannot be said that such notification under Section 4(1) was quashed only in respect of the persons who had approached the Supreme Court at that stage.

8. We are afraid the contention raised by the learned Senior Counsel appearing for the appellants cannot be accepted. The appellants claimed to have purchased the land from the power of attorney holder of the original owner, namely, Asirvatham. (It is another matter that the original owner is disputing the authority of the so called power of attorney holder to sale the land on behalf of the original owner. In the present case, we are not considering the dispute raised on this account). It is therefore obvious that, even assuming that sale deed is valid the purchasers can only step into the shoes of the original owner. As already noticed, the original owner had filed W.P.No.2879 of 1983. The main contention raised in

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the said writ petition was not regarding the validity of the land acquisition proceedings, but regarding legality of certain provisions in the Act. The alternative prayer was for payment of compensation at market rate. Such writ petition had been dismissed. Declaration under Section 6 had been made and thereafter the award had also been passed so far as the original owner is concerned. As a matter of fact, some of other petitioners, who were parties to the writ petitions, had subsequently filed other writ petitions contending that 4(1) notification itself having been quashed it must be taken that there was no land acquisition. However, such contention was also rejected by the Division Bench in W.A.Nos.1144 & 1145 of 1996. The relevant portion of such judgment has already been extracted. The reasoning given by the Division Bench in those matters are also applicable to the present case. Moreover, since the original owner had remained satisfied with the land acquisition and had never challenged, obviously the alleged subsequent purchasers cannot challenge such land acquisition notification.

9. Learned Senior Counsel for the appellants had also contended that after the judgment of the Supreme Court was rendered, the officials themselves were under the impression that the entire land acquisition proceedings had been quashed and accordingly certain communications were also made to that effect.

10. Even assuming that some of the officials were under the wrong impression that entire land acquisition proceedings had been quashed, the fact remains that land acquisition proceedings should be taken to have been quashed only in respect of persons who had approached the High Court and thereafter the Supreme Court. Even otherwise, the Supreme Court had quashed the notification under Section 4(1) of the Act not on the ground that there was no public purpose or on any ground common to all the owners, but merely on the ground that there was no time available to issue declaration under Section 6 of the Act. Therefore, in respect of those persons, since Section 6 declaration could not have been made within the time stipulated, the Supreme Court was of the view that there was no point in keeping Section 4(1) notification in tact. However, as rightly observed by the Division Bench in W.A.Nos.1144 & 1145 of 1996, such a question does not arise in the case of other owners, in respect of whom Section 6 declaration had been made within time and awards had been passed. Merely because some of the officials were under the wrong impression, it cannot be now said that land acquisition proceedings which had been completed in respect of other owners became invalid.

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11. For the aforesaid reasons, we do not find any merit in these appeals and they are dismissed. No costs.

Sd/-
Asst. Registrar.
Dated: 20.3.2007

*Corrected as per the order
of the Dep. Registrar (Judicial)
dated 24.4.2007

Sd/
Assistant Registrar
Dated 26.4.2007.

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Sub Asst. Registrar.

dpk

To

1. The Secretary to Government,
   State of Tamil Nadu,
   Housing and
   Urban Development Department,
   Fort St. George, Chennai 9.
2. The Managing Director,
   Tamil Nadu Housing Board,
   Nandanam, Chennai 600 035.
3. The Special Deputy Collector
   (Land Acquisition),
   Tamil Nadu Housing Board Scheme,
   Chengalpattu District,
   Ashok Nagar, Shopping Complex,
   Chennai 600 083.
4. The Executive Engineer,
   Special Division,
   Tamil Nadu Housing Board,
   Anna Nagar West, Chennai 600 002.

Corrected order to be despatched for the order already despatched on 24.3.2007

1 cc to Mr.K. Chelladurai,
Advocate, sr. 1739
1 cc to Government Pleader,
High Court, Madras, Sr. 1507
5 ccs to Mr.M.A. Abdul Wahab,
Advocate, sr. 1419
2 ccs to Mr.S. Punniyakotti,
Advocate, Sr. 1221
1 cc o Mr.M. Sriram, Advocate, SR. 1216

WA.NOs.2658 to 2664/02

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